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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,182	06/20/2003	Fritz H. Bach	13681-012001	8996

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FISH & RICHARDSON PC  
P.O. BOX 1022  
MINNEAPOLIS, MN 55440-1022

EXAMINER
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JONES, DAMERON LEVEST

ART UNIT	PAPER NUMBER
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1618

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
2 MONTHS	01/11/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/600,182

Applicant(s)

BACH ET AL.

Examiner

D. L. Jones

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 8/23/06 & 10/19/06.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 1-15 and 21-23 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-20 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/23/06</u> . | 6) <input type="checkbox"/> Other: _____  |

## **EXPARTE QUALYE**

1. This application is in condition for allowance except for the following formal matters:

Applicant needs to cancel claims (claims 1-15 and 21-23 )directed to the non-elected subject matter.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

## **RESPONSE TO APPLICANT'S ARGUMENTS**

2. The Examiner acknowledges Applicant's request for reconsideration filed 10/19/06.

**Note:** Claims 1-23 are pending.

### **Double Patenting Rejection**

The double patenting rejection is WITHDRAWN.

### **Restriction Requirement**

It is duly noted that Applicant maintains the traversal of the restriction requirement for reasons of record in their response filed 1/24/06 and has requested that the Examiner once again reconsider the restriction requirement.

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Applicant's request for reconsideration based on the response submitted 1/24/06 have been reviewed again and found once again non-persuasive.

First, a method of transplanting an organ is of a different scope than a method of performing angioplasty, a method of treating naturally arising cancer, and a method of reducing inflammation. As a result, prior art which is applied against one method would neither anticipate nor render obvious one of the other method. Also, it is noted that the term 'inflammation' defined using any standard medical dictionary (i.e., The Harper Collins Illustrated Medical Dictionary, page 221) is a tissue reaction to irritation, infection, or injury, marked by localized heat, swelling, redness, pain, and sometimes loss of function. Furthermore, the phrase 'inflammation' encompasses a wide range of conditions associated with asthma, adult respirator distress syndrome, interstitial pulmonary fibrosis, pulmonary emboli, chronic obstructive pulmonary emboli, chronic obstructive pulmonary disease, primary pulmonary hypertension, chronic pulmonary emphysema, congestive heart failure, peripheral vascular disease, stroke, atherosclerosis, ischemic reperfusion injury, heart attack, glomerulonephritis, conditions involving inflammation of the kidney, infection of the genitourinary tract, viral hepatitis, toxic hepatitis, cirrhosis, ileus, necrotizing enterocolitis, specific and non-specific inflammatory bowel disease, rheumatoid arthritis, cancer, wounds, Alzheimer's disease, Parkinson's disease, graft versus host disease, and hemorrhagic septic, or anaphylactic shock (see claim 13 in the instant invention). Hence, it is the Examiner's position that the inventions are distinct and would require separate search and consideration. Thus, the restriction requirement is still deemed proper.

### **WITHDRAWN CLAIMS**

3. Claims 1-15 and 21-23 are withdrawn from further consideration by the Examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### **ALLOWABLE CLAIMS**

4. Claims 16-20 are allowable over the prior art of record. In particular, the claims are distinguished over the prior art of record for reasons of record in the office action mailed 4/19/06.

**Note:** It should be noted that the full scope of claims 16-20 have been searched.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617.

The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



D. L. Jones  
Primary Examiner  
Art Unit 1618

January 3, 2007